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DEPARTMENT OF ECOLOGY

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April 1, 2010

Ms. Carol Lumb, AICP
Senior Planner
City of Tukwila
6300 Southcenter Blvd, Suite 100
Tukwila, WA 98188-8548

RE: Shoreline Master Program Submittal

Dear Ms. Lumb:

The Department of Ecology is in receipt of the City of Tukwila Shoreline Master Program final submittal package received on January 26, 2010 with supplemental materials received on February 8, 2010. We commend the City for your efforts in adopting the SMP.

This letter contains two important sets of information. First, this letter details completeness issues. All completeness concerns must be addressed before Ecology can continue its review of the SMP. This letter constitutes a formal completeness determination pursuant to WAC 173-26-120(1).

The letter will also discuss a number of substantive issues. Substantive issues are not completeness issues within the meaning of WAC 173-26-110, but rather identified approvability concerns. Ecology will not be able to approve the SMP until the substantive issues are resolved. It is important to note that the list of substantive issues has not been formalized and may not be comprehensive. Our discussion of substantive issues is for your information and discussion purposes only. The substantive issues listed in this letter are not formal offers of alternative SMP language pursuant to WAC 173-26-120(7). We should plan to further discuss these issues.

Completeness

1. The SMP states that:
 - a. For the Shoreline Residential Environment: The Shoreline Residential Environment shall contain residential, recreational and limited commercial uses and accessory uses as allowed in the underlying zoning district (page 73).



- b. For the Urban Conservancy Environment: All uses permitted in the Urban Conservancy Environment Buffer and/or the underlying zoning district may be allowed (page 75).
- c. For the High Intensity Environment: All uses permitted in the High Intensity Environment Buffer and/or the underlying zoning district may be allowed (page 77).

These sections of the proposed SMP incorporate sections of the Tukwila zoning code as SMP standards. Yet these code sections are not identified or included submittal package. Such incorporated sections must be included as part of the SMP. The incorporated sections of the zoning code must be identified by section number and date of adoption and attached to the SMP. Since this was not done, the submittal is incomplete pursuant to WAC 197-26-110(2). **Please also see Substantive Issue 1, below for additional discussion regarding this matter.**

- 2. The sign code is incorporated as a shoreline standard on page 72. A copy of the sign code, with its date of adoption needs to be provided.
- 3. Page 98 contains a reference to TMC 18.52. A copy of TMC 18.52 was not provided in the submittal package. All substantive code standards that a utilized as part of the SMP must be adopted into the SMP. Ecology must receive and review all adopted codes.
- 4. The enforcement provisions cited on page 155, section 16.2, need to be included for our review.
- 5. The shoreline environment map provided with the SMP is at a scale of 1 inch representing 5 miles. It is difficult, if not impossible, to determine which shoreline environment is applicable to specific areas in some cases. The shoreline environment maps need to be at a large enough scale so that the shoreline environment of each parcel can be conclusively determined.
- 6. On page 93, a unique "Type 2 Shoreline Tree Removal and Vegetation Clearing Permit" is required. This appears to be a separate, unique type of shoreline permit. The process for this permit needs to be included in the SMP or within associated regulations. You need to provide copy of such regulations.

Substantive Issues For Discussion

- 1. We have previously discussed the need for a use matrix in the SMP. The adopted SMP did not contain a use matrix. Tukwila staff has previously worked on a matrix. This matrix should also address the following issues:
 - a. The use matrix should make provision for boating facilities.

- b. Agriculture should be allowed in some manner (such as a permitted or conditional use) in the Urban Conservancy environment.
 - c. Industrial uses should make provision for water-dependent and water-related industrial uses.
 - d. Recreation uses should make provision for water dependent recreation and water recreation uses.
 - e. Accessory uses should be defined and limited.
 - f. Uses not allowed by the zoning need a shoreline classification. Not allowed in shoreline jurisdiction seems like the most likely use.
 - g. There should be a category for water-dependent commercial uses.
2. Waterward areas of the Green River are not designated on the shoreline environment maps. Shoreline areas waterward of the Ordinary High Water mark (OHWM) must be designated.
 3. There is no minimum buffer with the buffer reductions discussed on page 70 of the SMP. All of the references to buffer reductions should make it clear that the minimum buffer is 50 feet.
 4. Signs need to be appropriately limited as a use in shoreline jurisdiction. The emphasis should be on signs that provide necessary information in shoreline jurisdiction for a shoreline related or public safety use
 5. The SMP does not contain standards for agriculture. This is in spite of the fact that a portion of the Tukwila South annexation area is still agricultural fields. We recognize that there are significant development plans for the Tukwila South area. However, the development of Tukwila South is expected to occur over a number of years. At least a portion of this land can be expected to remain available for agricultural production for a period of time.
 6. On page 49, Section 7.3, second paragraph, it should read Natural – not Natural Resource.
 7. On pages 53 and 54, it is stated the buffer can be reduced to the actual width required. It needs to be clear that this means that the buffer is reduced pursuant to the buffer reduction standards and in no case to less than 50 feet. For anywhere is the SMP where it is stated that the buffer can be reduced to the actual width required, it needs to be stated what the minimum possible buffer width could be

and where the applicable criteria are located. It needs to be clear that the shoreline administrator does not have discretion to reduce the buffer arbitrarily.

8. On pages 51 to 54 at various locations it is stated that the applicant must demonstrate to the director that there will be no adverse impacts to the shoreline ecological functions. It would be helpful to have criteria and/or a methodology for achieving no net loss. Without such criteria, this could be difficult to implement. Additionally, we suggest the following mitigation sequencing:
 - a. Avoiding the impact altogether by not taking a certain action or parts of an action;
 - b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts,
 - c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment,
 - d. Reducing or eliminating the impact over time by preservation and maintenance operations,
 - e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments, and
 - f. Monitoring the impact and the compensation projects and taking appropriate corrective measures.
9. On Page 68, the additional fill provisions need to be analyzed in the Cumulative Impact Analysis or an addendum to the cumulative impacts analysis.
10. Except for water dependent uses proposed utilizing mitigation sequencing and remediation projects, encroachments of any sort in the buffers should be limited. We recommend that the encroachments be no more than 20% of the area of the buffer.
11. On page 73, subsection t, patios and decks should not be allowed outright in buffers. Additionally, this provision would need to be addressed in the Cumulative Impacts Analysis.
12. On page 73, subsection r, page 75, subsection s, and page 76, subsection s, we recommend that this only include essential public facilities that require a shoreline location unless a suitable location outside of shoreline jurisdiction cannot be found.

13. On page 75 for the uses allowed in the Urban Conservancy environment:
 - a. The SMP makes reference to the underlying zone. Ecology needs shoreline permitted uses to be detailed in the SMP use matrix.
 - b. This section does not identify what all of the allowed conditional uses are. Ecology needs shoreline permitted uses to be detailed in the SMP use matrix.
14. On page 76, the High Intensity buffer allows signs as provided in the sign code. Signs necessary to further a water-dependent, public safety, or recreation use of a limited size seem more appropriate.
15. On page 76, 8.4.A.1(o) allows for water dependent commercial and industrial development in the buffer. There is no mention of mitigation required. Development of this sort should require a no net loss standard, as well as mitigation sequencing, outlined below:
 - a. Avoiding the impact altogether by not taking a certain action or parts of an action;
 - b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts,
 - c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment,
 - d. Reducing or eliminating the impact over time by preservation and maintenance operations,
 - e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments, and
 - f. Monitoring the impact and the compensation projects and taking appropriate corrective measures.
16. Water dependent uses at subsections 8.4.A.1(m) and (p) should require mitigation sequencing.
17. Allowed uses in the High Intensity environment include everything allowed in the underlying zone. Please see the discussion in Substantive Issues comment Number 1, above. The High Intensity environment must include provision for water-dependent uses as a preferred use.

18. On page 102, it is unclear where boat launches are permitted. This should be in the use matrix.
19. On page 82, the SMP requires that “stormwater outfalls must be designed so to cause no net loss of shoreline ecological function.” While, Ecology supports this standard, additional criteria will help to make the standard implementable. We suggest the following mitigation sequencing:
 - a. Avoiding the impact altogether by not taking a certain action or parts of an action;
 - b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts,
 - c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment,
 - d. Reducing or eliminating the impact over time by preservation and maintenance operations,
 - e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments, and
 - f. Monitoring the impact and the compensation projects and taking appropriate corrective measures.
20. On pages 83 and 84, the SMP requires a Riverbank Analysis Report. The SMP needs to outline standards for a Riverbank Analysis Report. A Riverbank Analysis Report needs to function as a geotechnical report. The guidelines specify that:

Geotechnical reports pursuant to this section that address the need to prevent potential damage to a primary structure shall address the necessity for shoreline stabilization by estimating time frames and rates of erosion and report on the urgency associated with the specific situation. As a general matter, hard armoring solutions should not be authorized except when a report confirms that there is a significant possibility that such a structure will be damaged within three years as a result of shoreline erosion in the absence of such hard armoring measures, or where waiting until the need is that immediate, would foreclose the opportunity to use measures that avoid impacts on ecological functions. Thus, where the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as the

three years, that report may still be used to justify more immediate authorization to protect against erosion using soft measures.

21. On page 102 and 103, Over-water structures. An additional standard should be that over-water structures do not impair navigation.
22. On page 115, section 10.9.E, it is unclear if one or all of the criteria need to be met.
23. Page 133, Section 10.5, discusses public access incentives. How were the building height increases for public access addressed in the Cumulative Impacts Analysis. This section needs a requirement that the proposal be assessed for view blockage if the building height will be greater than 35 feet.
24. The shoreline restoration project standards outlined at Section 13.2.B, on page 144, are not necessary in light of the standards outlined in section 13.2.A. The exemptions in section 13.2.B may be in conflict with the standards at section 13.2.A. This section only requires section 13.2.A. Section 13.2.b.5 is necessary.
25. In chapter 13, it should be noted that RCW 90.58.580 (HB 2199) requires a Department of Ecology review.
26. On page 151, the Cumulative Impact Analysis needs to address the extension of nonconforming uses from 24 months to 48 months.
27. On page 155, it should be clearly stated that the City of Tukwila issues decisions on shoreline substantial development permits. The City makes a recommendation on shoreline conditional use permits and shoreline variances. The Department of Ecology issues decisions on shoreline conditional use permits and shoreline variances.
28. If gravel removal for flood control is allowed by the SMP, then it needs to be addressed in the shoreline regulations.
29. Breakwaters, jetties, groins, weirs, and similar structures should require a shoreline conditional use permit except where proposed to protect ecological functions. If a conditional use permit is not required, a rationale should be provided as to why the City prefers to not require a shoreline conditional use permit.

Additional Issues

30. The SMP needs to address whether live aboards will be allowed.

31. The SMP should include the following definitions:
 - a. Buffer
 - b. Bulkhead
 - c. Agriculture
32. The definition of substantial development should be the same as state law, RCW 90.58.030(2)(b).
33. Page 99 and 100 contain regulations relating to fills. WAC 173-26-231(3)(c) states that:

Fills waterward of the ordinary high-water mark shall be allowed only when necessary to support: Water-dependent use, public access, cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan, disposal of dredged material considered suitable under, and conducted in accordance with the dredged material management program of the department of natural resources, expansion or alteration of transportation facilities of statewide significance currently located on the shoreline and then only upon a demonstration that alternatives to fill are not feasible, mitigation action, environmental restoration, beach nourishment or enhancement project. Fills waterward of the ordinary high-water mark for any use except ecological restoration should require a conditional use permit.

This language should be added to the SMP.

34. On page 100, the dredging standards should state when dredging is allowed. See WAC 173-26-231(3)(f). Please note that dredging cannot be to obtain fill unless it is for environmental mitigation.
35. On page 102 in section 9.12.C(6), the specific standards for boat lifts and canopies should be detailed. This section should include specific standards - not just a reference to the requirements of a U.S Army Corps of Engineers Regional General Permit. Please be aware that Regional General Permits sometimes are amended or sometimes expire. It would be better for the SMP to list the standards that the City wants to see.
36. On page 120, what is a Type II permit? Please include, or reference, all incorporated permit criteria.
37. On page 124 in section 10.12.A, the mitigation sequencing standards should follow the steps outlined in WAC 173-26-201(2)(e)(i). This includes:

- a. Avoiding the impact altogether by not taking a certain action or parts of an action;
 - b. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts,
 - c. Rectifying the impact by repairing, rehabilitating, or restoring the affected environment,
 - d. Reducing or eliminating the impact over time by preservation and maintenance operations,
 - e. Compensating for the impact by replacing, enhancing, or providing substitute resources or environments, and
 - f. Monitoring the impact and the compensation projects and taking appropriate corrective measures.
38. On page 152 at section 14.5(B)(5), residential structures that do not conform to the SMP are decreed to not be nonconforming. The means that if a residential structure is located in what would otherwise be a buffer, the area covered by the structure is not a buffer. The cumulative impact analysis needs to address the actual buffers in residential areas.
39. The cumulative impacts analysis needs to address shoreline development anticipated as part of Tukwila South.
40. Section 9.6.F should specifically include a discussion regarding avoidance or minimization of impacts to sediment transport.
41. Section 9.12 should include size standards for piers and docks.
42. While the policy guidance at Policy 5.3.2 on page 38 of the SMP is good, there should be specific regulatory criteria to plan, locate, and design proposed transportation and parking facilities where routes will have the least possible adverse effect on unique or fragile shoreline features, will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses (See WAC 173-26-241(3)(k).
43. The SMP, or associated administrative provisions, will need a mechanism for tracking cumulative effects as discussed in WAC 173-26-191(2)(a)(iii)(D).

Wetland Specialist Comments

44. Section 10.6(D), page 112 – Comment/change: this section cites an outdated publication for rating wetlands (#93-74). The proper citation should read: Washington State Wetlands Rating System for Western Washington, Washington State Department of Ecology, August 2004, Publication #04-06-025.
45. Section 10.7(A), page 113 – Suggestion: the city has the opportunity here to adopt the most current stream typing system used by state agencies and many other jurisdictions. The typing system can be found at DNR's web-site using the following link:

http://www.dnr.wa.gov/BusinessPermits/Topics/ForestPracticesApplications/Pages/fp_watertyping.aspx

At some point in the future, the city will be required to update the SAO and will be encouraged to adopt the state's water typing at that time as well. It would make sense to adopt the typing system now for consistency purposes.

46. Section 10.9(A), page 114 – Suggestion: there is nothing in this section with regards to existing legally established uses within buffers. At the very least, perhaps it would be good to reference Section 14.5 on page 151 in this section.
47. Section 10.9(C)(1), page 114 – Comment/change: the buffers widths as adopted may be consistent with those in TMC 18.45 for offering "equal protection" to the city's existing SAO; however, in the absence of supporting scientific documentation that demonstrates the adequacy of those buffer widths, the standards found in Appendix 8C should be applied. The City of Tukwila needs to either adopt one of the three alternatives in Appendix 8C or provide alternative buffer widths based upon current BAS with supporting documentation.

Staff notes that this may have little effect upon most of the city's shoreland wetlands due to the highly developed urbanization within Tukwila's shoreline jurisdiction; however, it is important for consistency reasons that this change be incorporated. As stated above, local jurisdictions are allowed to develop alternatives to the Ecology guidance standards in Appendix 8C. Supporting documentation in the form of BAS needs to demonstrate that any proposed alternatives adequately protect the wetlands within the jurisdiction. In the absence of such documentation from the City of Tukwila, Ecology cannot support the wetland buffer widths as submitted.

48. 10.9(C)(2), page 114 – Suggestion: the city should consider using the DNR stream rating system here in place of the old stream typing system as presented in

this section. Under the new system, the Green/Duwamish River becomes a Type S waterbody (Shoreline of the state). Staff notes that the Tukwila SMP documents make references in several locations that the Type 1 Green/Duwamish River is to be protected consistent with the SAO's Type 2 stream buffer (see 7.4 on page 58, 7.5(C) on page 62, 7.7(C) on page 65, and also page 16 of the Cumulative Impacts Analysis). While the intent is understood, the text as written appears to be somewhat confusing at times. The text in 7.5(C) on page 62 offers the clearest insight as to the intent and rationale.

492. Section 10.11(D)(2), page 121 – Comment/change: for reasons consistent with the previous comment immediately above, the same is true for wetland alterations and mitigation ratios. The city needs to either adopt Ecology's guidance in Table 8C-11 for mitigation ratios or provide documentation for alternatives that is supported by BAS.
50. Section 10.11(E), page 122 – Suggestion: this section on watercourse alterations appears to be somewhat misleading in that any alteration of a stream requires the issuance of an HPA by WDFW. Again as stated in 10.7(A), pg. 113 above, Tukwila has the opportunity now to adopt the state's stream typing system consistent with the requirements of HPA applications reviewed by WDFW. See also the link: <http://apps.leg.wa.gov/WAC/default.aspx?cite=222-16-031>

Wetland Specialist Review - Cumulative Impacts Analysis – Revised December 2009

51. Page 19 – standards and regulations in the critical areas regulations (TMC 18.45) “are now integrated into the proposed SMP” – Comment/change: Per the proposed SMP, wetlands are now to be rated under Ecology's rating system which includes a four-tiered wetland category system. Tukwila's existing SAO found in TMC 18.45 does not include Category 4 wetlands and also allows for wetlands smaller than 1,000 square feet to be exempt. There is nothing in the SMP that attempts to address these inconsistencies.

For example, TMC 18.45.180 Exceptions reads: A. Wetlands 1,000 square feet and less that do not meet any of the criteria of TMC 18.45.080B are exempt from the requirements of TMC Chapter 18.45.

These small wetlands would not be exempt within the shoreline jurisdiction. Section 10 of the Tukwila Shoreline Master Plan Program – Attachment A, should provide direction as to how wetland areas, and in particular Category 4 wetlands within the shoreline jurisdiction are to be treated.

Floodplain Review

52. As stated in the earlier floodplain review, the City used old, outdated flood maps in the only document where I can find reference to flood maps, the 2006 Inventory and Characterization. Since then, new maps have been available in one form or another since September 2007. The new maps make a very dramatic change over what is found in Map 7 in the Inventory and Characterization. I know that this report was prepared before the new maps were provided, but I see no reference in any of the newly-written SMP that they have in any way been acknowledged. Following are some changes that should be made to reference this data:
- a. The new maps could be referenced on page 21 in the description of the Shoreline Inventory and Characterization report. At least this would make the reader know that the City is aware of the major changes since 1995 in the City's floodplains.
 - b. Paragraph 2 on page 22 describes the levee system along the Green/Duwamish River, and states that the current system "is a growing source of concern for King County and the cities involved, as many of the levees are aging and would not meet current standards for either flood conveyance or stability." This should be followed by a statement that FEMA has officially discredited levees all along the Green River system, including those in Tukwila with the exception of the levee protecting the Tukwila Urban Center. Without this wording, the reader is under the impression that the City is not acknowledging the discreditation that has already occurred.
 - c. Under Conclusions on page 27, there is a statement that: "Issues of concern today are focused on uncertainties about the ability of existing levees and revetments to protect existing development from flood hazards." This statement should be augmented with a more forceful acknowledgement that the levees have officially been determined to not be able to protect much existing development in the City in the base (100-year) flood.
 - d. On page 106, the report states that the location of mapped sensitive areas of shoreline jurisdiction are located in the Inventory and Characterization Report, and states that the maps are based on "best available information." A cursory look at the Report shows that best available information was not used to depict the City's floodplains. Additional language should be provided here to describe the new flood mapping that is currently available and should be in use, that which was prepared by King County and which is about to be released by FEMA in their new maps for King County (maps that have been available for two years now).

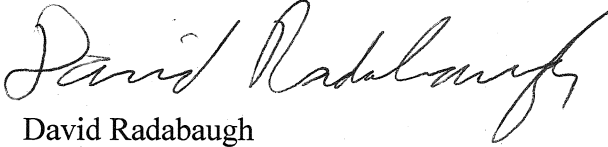
Ms. Carol Lumb

April 1, 2010

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We should discuss the best way to proceed towards Ecology approval. Please contact me at (425) 649-4260 or david.radabaugh@ecy.wa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "David Radabaugh". The signature is fluid and cursive, with the first name "David" being more prominent and the last name "Radabaugh" following in a similar style.

David Radabaugh
Shoreline Planner

Cc: Peter Skowlund, Department of Ecology
Geoff Tallent, Department of Ecology
Chuck Steele, Department of Ecology
Patrick McGraner, Department of Ecology